

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:04
PLR-136395-06

Date:
November 07, 2006

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Foreign Sub 1 =

Foreign Sub 2 =

Foreign Sub 3 =

Foreign Sub 4 =

Foreign Sub 5 =

Business X =

Business Y =

Investment Bank =

Dear :

This letter responds to your July 17, 2006 letter requesting rulings as to certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of

§ 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355 (a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return. Distributing has two classes of voting common stock outstanding, Class A and Class B.

Distributing wholly owns the stock of several domestic and foreign subsidiaries, including the direct ownership of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Foreign Sub 1, Foreign Sub 2, Foreign Sub 3, Foreign Sub 4, and Foreign Sub 5.

Distributing is directly and indirectly engaged in Business X and Y. The taxpayer has submitted financial information indicating that Business X and Business Y, as conducted by Distributing directly and through its relevant subsidiaries, has each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing's management has determined that the separation of Business X from Business Y will serve a number of corporate business purposes including: (1) to facilitate an IPO, private placement, or similar stock issuance by Distributing, and (2) increase the aggregate share value of Controlled and Distributing over the value of Distributing prior to the distribution described below.

Proposed Transaction

To accomplish the stated business purposes, the following transaction has been proposed (collectively the "Proposed Transaction"):

- (i) Distributing will contribute to newly formed Controlled, all of the assets and liabilities used in connection with Business X in exchange for Controlled, Class A stock and Controlled Class B stock, and the assumption by Controlled of certain liabilities related to the transferred assets (the "Contribution"). Included in the assets being transferred to Controlled is the stock of wholly owned domestic and controlled foreign corporations ("CFC") that also operate Business X.

- (ii) Distributing will distribute all of its shares of Controlled Class A common stock and Class B common stock to its shareholders pro rata with the Distributing shareholders receiving Controlled Class A shares on the Class A shares of Distributing and the Class B shares of Controlled on the Class B shares of Distributing (the "Distribution").
- (iii) Following the Distribution, Distributing intends to engage Investment Bank to assist it with an Initial Public Offering ("IPO"), private placement or similar transaction, of less than 50-percent of Distributing stock.

Representations

Distributing makes the following representations with respect to the Contribution and the Distribution:

- (a) The indebtedness owed by Controlled to Distributing, if any, after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing will be received by any Distributing shareholder as a creditor, employee, or in any capacity other than that of a Distributing shareholder.
- (c) The five years of financial information submitted on behalf of Distributing's Business X and Business Y represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) To facilitate the transition of Business X to Controlled, for a period of time, certain employees will perform services for both Distributing and Controlled and will be paid the fair market value of their services by each corporation. Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (e) The Distribution is being carried out for the following business purpose: to facilitate an IPO, private placement, or similar stock issuance by Distributing, and to increase the aggregate share value of Distributing and Controlled. The Distribution is motivated, in whole or in substantial part, by one or more of these corporate business purposes.
- (f) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more

of the total combined voting power of all classes of Distributing entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(i) The total fair market value of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(j) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(k) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject. The fair market value of the Controlled assets will exceed the amount of the liabilities immediately after the Contribution.

(l) The liabilities to be assumed (as determined under § 357(d)) in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(m) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(n) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C. B.147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to its Controlled Common Stock will be included in income immediately before

the Distribution to the extent required by applicable Treasury Regulations (see § 1.1502-19).

(o) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

Rulings

Based solely on the information and representations submitted, we rule as follows on the Contribution and Distribution:

(1) The Contribution, followed by the Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(2) Distributing will recognize no gain or loss on the Contribution (§§ 357(a) and 361(a)).

(3) Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).

(4) Controlled's basis in each asset received in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) Controlled's holding period in each asset received from Distributing included the period during which Distributing held that asset (§ 1223(2)).

(6) Distributing will not recognize any gain or loss on the Distribution (§ 361(c)(1)).

(7) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution will equal the shareholder's aggregate basis in the Distributing stock held immediately before the Distribution. Such aggregate basis will be allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a)(1), (b)).

(8) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) a Distributing shareholder on the Distribution (§ 355(a)(1)).

(9) The holding period of the Controlled stock received by each Distributing shareholder will include the holding period of the Distributing stock on which the distribution is made, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both; and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)